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Charles A. Muserlian
Hedman and Costigan
1185 Avenue of the Americas
New York, NY 10036

In re Application of	:	
TRIFONI, et al.	:	DECISION ON PETITION
Serial No.: 10/524,040	:	
PCT No.: PCT/EP03/09554	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 28 August 2003	:	
Priority Date: 28 August 2002	:	
Atty Docket No.: 267.187	:	
For: MEMBRANE ELECTROCHEMICAL	:	
GENERATOR	:	

This decision is issued in response to applicant's "Renewed Petition under 37 CFR 1.47(a)" filed 29 June 2007 to accept the application without the signature of joint inventor, Eduardo Trifoni.

BACKGROUND

The background for the present application was set forth in detail in the Decision on Petition mailed by this Office on 19 October 2006. In that Decision on Petition, applicant's renewed petition under 37 CFR 1.47(a) was dismissed without prejudice for failure to satisfy the requirements of a grantable petition.

On 27 October 2006, applicant filed a second renewed petition. In a decision on petition dated 23 March 2007, applicant's renewed petition under 37 CFR 1.47(a) was dismissed without prejudice for failure to satisfy the requirements of a grantable petition.

On 30 March 2007 applicant filed a "Renewed Petition under 37 CFR 1.47(a)." In a decision on petition dated 20 June 2007, applicant's renewed petition under 37 CFR 1.47(a) was dismissed without prejudice for failure to satisfy the requirements of a grantable petition.

On 29 June 2007, applicant filed a "Renewed Petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application

or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor.

Applicant here has submitted the appropriate petition fee. Item (1) is therefore satisfied.

Regarding item (2), the petition asserts that the nonsigning inventor has refused to execute the declaration. Before a refusal to execute the application can be claimed, section 409.03(d) of the MPEP requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made."

Petitioner (Charles A. Muserlian) asserts that Eduardo Trifoni has received a complete copy of the application and he (Eduardo Trifoni) has refused to execute the application. Item (2) is therefore satisfied.

Regarding item (3), applicant has provided the last known address of the nonsigning inventor. Accordingly, item (3) is therefore satisfied.

Regarding item (4), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicant has filed a declaration executed by one of the two inventors and including an unsigned signature box identifying the nonsigning inventor (Eduardo Trifoni). This declaration is treated as having been executed by the available inventors on their behalf and on behalf of the nonsigning inventor. Item (4) is therefore satisfied.

For the reasons stated above, it is appropriate to accept the application without the signature of Eduardo Trifoni under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is GRANTED.

As provided in 37 CFR 1.47(c), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(c) will be published in the Official Gazette.

Serial No.: 10/524,040

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This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.

A handwritten signature in black ink, appearing to read "Anthony Smith".

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In re Application of
TRIFONI, et al.
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For: MEMBRANE ELECTROCHEMICAL
GENERATOR

Dear Eduardo Trifoni:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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